

IN THE COUNTY COURT OF BENTON COUNTY, ARKANSAS

In the Matter of Establishing a  
Stormwater Management Plan  
for Benton County, Arkansas

ORDER

NOW, on this 30<sup>th</sup> day of January, 2009 comes the above matter and the court finds:

- (1) This court has jurisdiction over the subject matter herein pursuant to Article 7  
Section 28 of the Arkansas Constitution in that it is a matter of internal  
improvement and local concern.
- (2) That Benton County pursuant to regulations promulgated by the Arkansas  
Department of Environmental Quality (ADEQ) must develop a Stormwater Management  
Plan in certain urbanized areas of the county that have been designated as MS4's.
- (3) That failure to implement a program can result in a fine of ten thousand dollars  
(\$10,000) per day and the time for implementation is not flexible.
- (4) That said program will not additionally burden development in the county as such  
is already regulated in a similar manner by the ADEQ.
- (5) That the Stormwater Management Plan attached hereto and  
incorporated herein as if set out word for word is hereby adopted.
- (6) Any violation of this order or the program implemented herein shall result in the  
commencement of a civil action in this court or circuit court. Furthermore, any  
such violations shall be reported to the Arkansas Department of Environmental  
Quality and the Prosecuting Attorney for violations of state law and/or  
regulations.

IT IS SO ORDERED

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DAVE BISBEE, County Judge

# **CONTENTS**

## **Stormwater Pollution Prevention, Grading, And Erosion Control**

### **ARTICLE 1. GENERAL PROVISIONS.**

- (A) Purposes
- (B) Administration
- (C) Abbreviations
- (D) Definitions

### **ARTICLE 2. PROHIBITIONS AND REQUIREMENTS.**

- (A) Prohibitions
- (B) Exemptions
- (C) Requirements Applicable to Certain Dischargers
- (D) Release Reporting and Cleanup
- (E) Authorization to Adopt and Impose Best Management Practices

### **ARTICLE 3. STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES.**

- (A) General Requirements for Construction Sites.
- (B) Construction Sites Requiring an Approved SWP3
- (C) Subdivision Developments Requiring an Approved SWP3
- (D) Stormwater Pollution Prevention Plans
- (E) Requirements for Utility Construction
- (F) Grading Plan

### **ARTICLE 4. ENFORCEMENT**

- (A) Enforcement Personnel Authorized
- (B) Right of Entry and Sampling
- (C) Enforcement Procedures
- (D) Enforcement Options For Failure to Comply
- (E) Action without Prior Notice
- (F) Enforcement Actions
- (G) Criminal Penalties
- (H) Other Appealable Actions
- ( I ) Other Legal Action
- ( J ) Applicability

### **ARTICLE 5. FEES**

- (A) Fees for Filing Plans

### **APPENDIX - EROSION AND SEDIMENT CONTROL GUIDELINES (BMP's)**

## **ARTICLE 1.**

### **GENERAL PROVISIONS**

#### **(A) Purposes**

The purpose and objectives of this Article are as follows:

1. To maintain and improve the quality of water impacted by the storm drainage system within the designated urbanized areas in the County.
2. To prevent the discharge of contaminated stormwater runoff and illicit discharges from industrial, commercial, residential, and construction sites into the storm drainage system within the designated areas in the County.
3. To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the storm drainage system.
4. To encourage recycling of used motor oil and safe disposal of other hazardous consumer products.
5. To facilitate compliance with state and federal standards by owners of construction sites within the designated areas in the County.
6. To enable the County to comply with all federal and state laws and regulations applicable to the National Pollutant Discharge Elimination System (NPDES) permitting requirements for stormwater discharges.

#### **(B) Administration**

Except as otherwise provided herein or by the County Judge, the Environmental Affairs Officer shall administer, implement, and enforce the provisions of this program.

#### **(C) Abbreviations**

The following abbreviations, when and if used herein, shall have the designated meanings:

ADEQ - Arkansas Department of Environmental Quality  
BMP - Best Management Practices  
CFR - Code of Federal Regulations  
EPA - U.S. Environmental Protection Agency  
HHW - Household Hazardous Waste  
MS4 - Municipal Separate Storm Sewer System  
NPDES - National Pollutant Discharge Elimination System  
SWP3 - Stormwater Pollution Prevention Plan

**(D) Definitions**

Unless a provision explicitly states otherwise, the following terms and phrases, when and if used herein, shall have the meanings hereinafter designated.

(1) **Best Management Practices (BMP's)** here refers to management practices and methods to control pollutants in stormwater. BMP's are of two types: "source controls" (nonstructural) and "treatment controls" (structural). Source controls are practices that prevent pollution by reducing potential pollutants at their source, before they come into contact with stormwater. Treatment controls remove pollutants from stormwater. The selection, application and maintenance of BMP's must be sufficient to prevent or reduce the likelihood of pollutants entering the storm drainage system. Specific BMP's shall be imposed by the County and are discussed further in Appendix A.

(2) **County** means the Benton County, Arkansas.

(3) **Clearing** means the act of cutting, removing from the ground, burning, damaging or destroying trees, stumps, hedge, brush, roots, logs, or scalping existing vegetation

(4) **Commercial** means pertaining to any business, trade, industry, or other activity engaged in for profit.

(5) **Construction Site** means any location where construction activity occurs.

(6) **Construction Spoil** means material of any nature which is removed or displaced during the construction or grading process.

(7) **Contaminated** means containing harmful quantities of pollutants.

(8) **Contractor** means any person or firm performing or managing construction work at a construction site, including any construction manager, general contractor or subcontractor. Also includes, but is not limited to, earthwork, paving, building, plumbing, mechanical, electrical or landscaping contractors, and material suppliers delivering materials to the site.

(9) **Discharge** means any addition or release of any pollutant, stormwater or any other substance whatsoever into storm drainage system.

(10) **Discharger** means any person who causes, allows, permits, or is otherwise responsible for, a discharge, including, without limitation, any owner of a construction site or industrial facility.

(11) **Domestic Sewage** means sewage originating primarily from kitchen, bathroom and laundry sources, including waste from food preparation, dishwashing, garbage grinding, toilets, baths, showers and sinks.

(12) **Earthwork** means the disturbance of soils on a site associated with clearing, grading, or excavation activities.

- (13) **Environmental Protection Agency (EPA)** means the United States Environmental Protection Agency, the regional office thereof, any federal department, agency, or commission that may succeed to the authority of the EPA, and any duly authorized official of the EPA or such successor agency.
- (14) **Facility** means any building, structure, installation, process, or activity from which there is or may be a discharge of a pollutant.
- (15) **Fertilizer** means a substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers.
- (16) **Fire Protection Water** means any water, and any substances or materials contained therein, used by any person to control or extinguish a fire, or to inspect or test fire equipment.
- (17) **Garbage** means putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.
- (18) **Groundwater** means any water residing below the surface of the ground or percolating into or out of the ground.
- (19) **Harmful Quantity** means the amount of any substance that the Environmental Affairs Officer determines will cause an adverse impact to storm drainage system or will contribute to the failure of the County to meet the water quality based requirements of the NPDES permit for discharges from the MS4.
- (20) **Hazardous Substance** means any substance listed in Table 302.4 of 40 CFR Part 302.
- (21) **Hazardous Waste** means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.
- (22) **Household Hazardous Waste (HHW)** means any material generated in a household (including single and multiple residences) that would be classified as hazardous.
- (23) **Illegal Discharge** see illicit discharge below.
- (24) **Illicit Discharge** means any discharge to the storm drainage system that is prohibited under this program.
- (25) **Illicit Connection** means any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drainage system.

- (26) **Industrial Waste** (or commercial waste) means any wastes produced as a byproduct of any industrial, institutional or commercial process or operation, other than domestic sewage.
- (27) **Land Alteration** means the process of grading, clearing, filling, excavating, quarrying, tunneling, trenching, construction or similar activities
- (28) **Mechanical Fluid** means any fluid used in the operation and maintenance of machinery, vehicles and any other equipment, including lubricants, antifreeze, petroleum products, oil and fuel.
- (29) **Mobile Commercial Cosmetic Cleaning (or mobile washing)** means power washing, steam cleaning, and any other method of mobile cosmetic cleaning, of vehicles and/or exterior surfaces, engaged in for commercial purposes or related to a commercial activity.
- (30) **Municipal Separate Storm Sewer System (MS4)** means the system of conveyances, including roads, streets, curbs, gutters, ditches, inlets, drains, catch basins, pipes, tunnels, culverts, channels, detention basins and ponds owned and operated by the County and designed or used for collecting or conveying stormwater, and not used for collecting or conveying sanitary sewage.
- (31) **NPDES** means the National Pollutant Discharge Elimination System.
- (32) **NPDES Permit** means a permit issued by EPA that authorizes the discharge of pollutants to Waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.
- (33) **Notice of Violation** means a written notice detailing any violations of this program and any action expected of the violators.
- (34) **Oil** means any kind of oil in any form, including, but not limited to: petroleum, fuel oil, crude oil, synthetic oil, motor oil, cooking oil, grease, sludge, oil refuse, and oil mixed with waste.
- (35) **Open Drainage Channel** means a ditch or depression, natural or constructed that may intercept and/ or carry stormwater runoff.
- (36) **Owner** means the person who owns a facility, part of a facility, or land.
- (37) **Person** means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns, including all federal, state, and local governmental entities.
- (38) **Pesticide** means a substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest.

**(39) Pet Waste (or Animal Waste)** means excrement and other waste from domestic animals.

**(40) Petroleum Product** means a product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel or lubricant in a motor vehicle or aircraft, including motor oil, motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel.

**(41) Pollutant** means any substance attributable to water pollution, including but not limited to rubbish, garbage, solid waste, litter, debris, yard waste, pesticides, herbicides, fertilizers, pet waste, animal waste, domestic sewage, industrial waste, sanitary sewage, wastewater, septic tank waste, mechanical fluid, oil, motor oil, used oil, grease, petroleum products, antifreeze, surfactants, solvents, detergents, cleaning agents, paint, heavy metals, toxins, household hazardous waste, small quantity generator waste, hazardous substances, hazardous waste, soil and sediment.

**(42) Pollution** means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animal life, plant life, property, or public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

**(43) Potable Water** means water that has been treated to drinking water standards and is safe for human consumption.

**(44) Private Drainage System** means all privately or other publicly owned ground, surfaces, structures or systems, that contribute to or convey stormwater, including but not limited to, roofs, gutters, downspouts, lawns, driveways, pavement, roads, streets, curbs, gutters, ditches, inlets, drains, catch basins, pipes, tunnels, culverts, channels, detention basins, ponds, draws, swales, streams and any ground surface.

**(45) Public Improvement Plans** means engineering drawings subject to approval by the Environmental Affairs Officer and/ or the County Engineer for the construction of public improvements.

**(46) Qualified Person** means a person who possesses the required certification, license, or appropriate competence, skills, and ability as demonstrated by sufficient education, training, and/or experience to perform a specific activity in a timely and complete manner consistent with the regulatory requirements, and generally accepted industry standards for such activity.

**(47) Release** means to dump, spill, leak, pump, pour, emit, empty, inject, leach, dispose or otherwise introduce into the storm drainage system.

**(48) Rubbish** means non-putrescible solid waste, excluding ashes, that consist of: (A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and (B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and

similar materials that do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

(49) **Sediment** means soil (or mud) that has been disturbed or eroded and transported naturally by water, wind or gravity, or mechanically by any person.

(50) **Septic Tank Waste** means any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and aerated tanks and shall also include decentralized sewer systems.

(51) **Shall** means mandatory; **may** means discretionary.

(52) **Site** means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(53) **Solid Waste** means any garbage, rubbish, refuse and other discarded material, including solid, liquid, semisolid, or contained gaseous material, resulting from industrial, municipal, commercial, construction, mining or agricultural operations, and residential, community and institutional activities.

(54) **State** means The State of Arkansas.

(55) **Storm Drainage System** means all surfaces, structures and systems that contribute to or convey stormwater, including private drainage systems, the MS4, surface water, groundwater, waters of the State and waters of the United States.

(56) **Stormwater** means runoff resulting from precipitation.

(57) **Stormwater Pollution Prevention Plan (SWP3)** means a document that describes the Best Management Practices to be implemented at a site, to prevent or reduce the discharge of pollutants.

(58) **Subdivision Development** includes activities associated with the platting or division of any parcel of land into two or more lots or tracts and includes all construction activity taking place thereon.

(59) **Surface Water** means water bodies and any water temporarily residing on the surface of the ground, including oceans, lakes, reservoirs, rivers, ponds, streams, puddles, channelized flow and runoff.

(60) **Uncontaminated** means not containing harmful quantities of pollutants.

(61) **Used Oil (or Used Motor Oil)** means any oil that as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties.



**(62) Utility Agency** means private utility companies, engaged in the construction or maintenance of utility distribution lines and services, including water, sanitary sewer, storm sewer, electric, gas, telephone, television and communication services.

**(63) Wastewater** means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

**(64) Waters of the State (or water)** means any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, inside the territorial limits of the State, and all other bodies of surface water, natural or artificial, navigable or non-navigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the State or inside the jurisdiction of the State.

**(65) Water Quality Standard** means the designation of a body or segment of surface water in the State for desirable uses and the narrative and numerical criteria deemed by State or Federal regulatory standards to be necessary to protect those uses.

**(66) Waters of the United States** means all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and the flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the federal definition of "waters of the United States" at 40 CFR Section 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the Federal Clean Water Act.

**(67) Wetland** means any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

**(68) Yard Waste** means leaves, grass clippings, tree limbs, brush, soil, rocks or debris that result from landscaping, gardening, yard maintenance or land clearing operations.

## **ARTICLE 2.**

### **PROHIBITIONS AND REQUIREMENTS.**

#### **(A) Prohibitions**

- (1) No person shall release or cause to be released into the storm drainage system any discharge that is not composed entirely of uncontaminated stormwater, except as allowed herein. Common stormwater contaminants include trash, yard waste,

lawn chemicals, pet waste, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste and sediment.

- (2) Any discharge is prohibited if the discharge in question has been determined by the Environmental Affairs Officer to be a source of pollutants to the storm drainage system.
- (3) The construction, use, maintenance or continued existences of illicit connections to the storm drain system are prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (4) No person shall connect a line conveying sanitary sewage, domestic sewage or industrial waste, to the storm drainage system, or allow such a connection to continue.
- (5) No person shall maliciously destroy or interfere with BMP's implemented pursuant to this program.

#### **(B) Exemptions**

The following non-stormwater discharges are deemed acceptable and not a violation:

- (1) A discharge authorized by an NPDES permit;
- (2) Uncontaminated waterline flushing and other infrequent discharges from potable water sources;
- (3) Infrequent uncontaminated discharge from landscape irrigation or lawn watering.
- (4) Discharge from the occasional non-commercial washing of vehicles;
- (5) Uncontaminated discharge from foundation, footing or crawl space drains, sump pumps and air conditioning condensation drains;
- (6) Uncontaminated groundwater, including rising groundwater, groundwater infiltration into storm drains, pumped groundwater and springs;
- (7) Diverted stream flows and natural riparian habitat or wetland flows; or a
- (8) A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials.

#### **(C) Requirements Applicable to Certain Dischargers**

- (1) **Private Drainage System Maintenance.** The owner of any private drainage system shall maintain the system to prevent or reduce the discharge of pollutants. This maintenance shall include, but is not limited to, sediment removal, bank erosion repairs, maintenance of vegetative cover, and removal of debris from pipes and structures.
- (2) **Minimization of Irrigation Runoff.** A discharge of irrigation water that is of sufficient quantity to cause a concentrated flow in the storm drainage system is prohibited. Irrigation systems shall be managed to reduce the discharge of water from a site.
- (3) **Cleaning of Paved Surfaces Required.** The owner of any paved parking lot, or paved private drive shall clean the pavement as required to prevent the buildup and discharge of pollutants. The visible buildup of mechanical fluid, waste materials, sediment or debris is a violation of this program. Paved surfaces shall be cleaned by dry sweeping, wet vacuum sweeping, collection and treatment of wash water or other methods in compliance with this Program.
- (4) **Maintenance of Equipment.** Any leak or spill related to equipment maintenance in an outdoor, uncovered area shall be contained to prevent the potential release of pollutants. Vehicles, machinery and equipment must be maintained to reduce leaking fluids.
- (5) **Materials Storage.** In addition to any other requirements of the County, materials shall be stored to prevent the potential release of pollutants. The uncovered, outdoor storage of unsealed containers of hazardous substances is prohibited.
- (6) **Pet Waste.** Pet waste should be monitored so as to prevent discharge to a storm drainage system.
- (7) **Pesticides, Herbicides and Fertilizers.** Pesticides, herbicides and fertilizers shall be applied in accordance with manufacturer recommendations and applicable laws. Excessive application shall be avoided.
- (8) **Prohibition on Use of Pesticides and Fungicides Banned from Manufacture.** Use of any pesticide, herbicide or fungicide, the manufacture of which has been either voluntarily discontinued or prohibited by the Environmental Protection Agency, or any Federal, or State regulation is prohibited.
- (9) **Open Drainage Channel Maintenance.** Every person owning or occupying property through which an open drainage channel passes shall keep and maintain that part of the drainage channel within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or retard the flow of water through the drainage channel. In addition, the owner or occupant shall maintain existing privately owned structures adjacent to a drainage channel, so that such structures will not become a hazard to the use, function, or physical integrity of the drainage channel.

**(D) Release Reporting and Cleanup**

Any person responsible for a known or suspected release of materials which are resulting in or may result in illegal discharges to the storm drainage system shall take all necessary steps to ensure the discovery, containment, abatement and cleanup of such release. In the event of such a release of a hazardous material, said person shall comply with all state, federal, and local laws requiring reporting, cleanup, containment, and any other appropriate remedial action in response to the release. In the event of such a release of non-hazardous materials, said person shall notify the Environmental Affairs Officer no later than 4:00 p.m. of the next business day.

#### **(E) Authorization to Adopt and Impose Best Management Practices**

The Environmental Affairs Officer may adopt and impose requirements identifying Best Management Practices for any activity, operation, or facility, which may cause a discharge of pollutants to the storm drainage system. Where specific BMP's are required, every person undertaking such activity or operation, or owning or operating such facility shall implement and maintain these BMP's at their own expense.

### **ARTICLE 3.**

#### **STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES.**

##### **(A) General Requirements for Construction Sites.**

- (1) The owner of a site of construction activity shall be responsible for compliance with the requirements of this program. All sites, in accordance with State law, must post appropriate notices, and keep such logs and records as required by ADEQ.
- (2) Waste Disposal. Solid waste, industrial waste, yard waste and any other pollutants or waste on any construction site shall be controlled through the use of Best Management Practices. Waste or recycling containers shall be provided and maintained by the owner or contractor on construction sites where there is the potential for release of waste. Uncontained waste that may blow, wash or otherwise be released from the site is prohibited.
- (3) Ready-mixed concrete, or any materials resulting from the cleaning of vehicles or equipment containing or used in transporting or applying ready-mixed concrete, shall be contained on construction sites for proper disposal. Release of these materials is prohibited.
- (4) Erosion and Sediment Control. Best Management Practices shall be implemented to prevent the release of sediment from construction sites. Disturbed areas shall be minimized, disturbed soil shall be managed and construction site entrances shall be managed to prevent sediment tracking. Excessive sediment tracked onto public streets shall be removed immediately.
- (5) Upon completion of permitted construction activity on any site, the property owner and subsequent property owners will be responsible for continued compliance with

the requirements of this program, in the course of maintenance, reconstruction or any other construction activity on the site.

- (6) All SWP3's filed with the Environmental Affairs Officer shall be accompanied by a certification by a qualified person that said SWP3 complies with this program; the rules and regulations of ADEQ; and any regulations promulgated hereto.

#### **(B) Construction Sites Requiring a SWP3**

This provision applies to all construction sites where construction on a site will disturb soil or remove vegetation on one (1) or more acres of land during the life of the construction project; this shall include a single lot in a subdivision regardless of size. A Stormwater Pollution Prevention Plan (SWP3) for the project must be provided and implemented by the construction site owner as follows:

- (1) The area disturbed shall be assumed to include the entire property area unless all applicable plans specifically exclude certain areas from disturbance.
- (2) The SWP3 must be provided by the owner and filed with the Environmental Affairs Officer. For sites subject to review by the Planning Board such will not be approved for construction until a duly certified SWP3 has been filed with the Environmental Affairs Officer.
- (3) The Environmental Affairs Officer may require revisions to the SWP3. Construction activity, including any soil disturbance or removal of vegetation, shall not commence on the site until a duly certified SWP3 has been filed with the Environmental Affairs Officer.
- (4) The owner and/or the developer bears the responsibility for implementation of the SWP3 and notification of all contractors and utility agencies on the site.

#### **(C) Subdivision Developments Requiring a SWP3**

Where construction of a subdivision development will disturb soil or remove vegetation on one (1) or more acres of land during the life of the development project, an approved Stormwater Pollution Prevention Plan (SWP3) for the project must be provided and implemented by the subdivision owner and/or the developer as follows:

- (1) The area disturbed shall be assumed to include the entire platted area.
- (2) An SWP3 must be provided by the subdivision owner and/or the developer.
- (3) An SWP3 must be provided for all phases of development, including sanitary sewer construction, storm drainage system construction, waterline, street and sidewalk construction, general grading and the construction of individual homes. The subdivision owner and/or the developer will not be required to provide an SWP3 for the activities of utility agencies within the subdivision.

- (4) The subdivision owner and/or the developer shall provide a copy of the SWP3 to all utility agencies prior to their working within the subdivision.
- (5) The subdivision owner and/or the developer bears the responsibility for implementation of the approved SWP3 for all construction activity within the development, excluding construction managed by utility agencies.
- (6) The subsequent owner of an individual lot bears the responsibility for continued implementation of the approved SWP3 for all construction activity within or related to the individual lot, excluding construction managed by utility agencies.

**(D) Stormwater Pollution Prevention Plans**

Preparation and implementation of Stormwater Pollution Prevention Plans for construction activity shall comply with the following:

- (1) Preparation:
  - (a) The SWP3 shall be prepared under the direction of a qualified person.
  - (b) The SWP3 shall provide the name, address and phone number of the project owner for purposes of correspondence and enforcement.
  - (c) The SWP3 shall identify existing natural resources such as streams, forest cover and other established vegetative cover.
  - (d) The SWP3 shall specify and provide detail for all BMP's necessary to meet the requirements of this program, including any applicable BMP's that have been adopted and imposed by the Environmental Affairs Officer.
  - (e) The SWP3 shall specify when each BMP will be installed, and for how long it will be maintained within the construction sequence. Multiple plans may be required for major phases of construction such as rough grading, building construction and final grading.
  - (f) The SWP3 shall delineate all anticipated disturbed areas and specify the vegetative cover that must be established in those areas to achieve final stabilization.
- (2) Implementation:
  - (a) BMP's shall be installed and maintained by qualified persons. The owner and/or the developer or their representative shall be able to produce upon the Environmental Affairs Officer request a copy of the SWP3 on site and shall be prepared to respond to unforeseen maintenance of specific BMP's.
  - (b) The owner and/or the developer or their representative shall inspect all BMP's at least twice per month and within 24 hours after a rainfall of one half of an inch or more as measured at the site or generally reported in the area.

(c) Based on inspections performed by the owner and/or the developer or the Environmental Affairs Officer, modifications to the SWP3 will be necessary if at any time the specified BMP's do not meet the objectives of this program. All modifications shall be initiated with twenty-four (24) hours of discovery, and completed within seven (7) days of discovery, except in circumstances necessitating more timely attention, and shall be recorded on the owner and/or the developer's copy of the SWP3.

#### **(E) Requirements for Utility Construction**

- (1) Utility agencies shall be responsible for compliance with the requirements this program.
- (2) Utility agencies shall develop and implement Best Management Practices (BMP's) to prevent the discharge of pollutants on any site of utility construction within the designated areas in the County. In addition, the Environmental Affairs Officer may adopt and impose BMP's on utility construction activity.
- (3) Utility agencies shall implement BMP's to prevent the release of sediment from utility construction sites. Disturbed areas shall be minimized, disturbed soil shall be managed and construction site entrances shall be managed to prevent sediment tracking. Excessive sediment tracked onto public streets shall be removed immediately.
- (4) Prior to entering a construction site or subdivision development, utility agencies shall have obtained from the owner and/or the developer a copy of any SWP3's for the project. Any disturbance to BMP's resulting from utility construction shall be repaired immediately by the utility company in compliance with the SWP3.

#### **(F) Grading Plans**

- (1) General requirements.

Persons engaged in land alteration activities regulated by this program shall take measures to protect neighboring public and private properties from damage by such activities. The requirements of this program, however, are not intended to prevent the reasonable use of properties.

(a) The responsible party shall be liable for all fines levied or remedial action required under this program. Each violation shall be considered a separate offense.

(b) Any person who engages in land alteration activities regulated herein without a grading plan, shall be required to restore the land, to the maximum extent practicable to its original condition.

(c) There shall be on the project site at all times an agent who is a competent superintendent capable of reading and thoroughly understanding plans,

specifications and requirements. The job superintendent shall have full authority to issue orders or direction to employees working on site, without delay and to promptly supply such materials, labor, equipment, tools, and incidentals as may be required to complete the work in a proper manner. If no superintendent is on site, the Environmental Affairs Officer may issue the notice of violation and stop work order to the person conducting the violation.

(2) Grading Plan Required.

(a) Any person proposing to engage in clearing, filling, cutting, quarrying, construction, or similar activities on any piece of disturbed land of 1 acre or larger, including a single lot in a subdivision regardless of size, shall file a grading and drainage plan with the Environmental Affairs Officer. Said plan shall include a certification by a qualified person that such complies with this program, the rules and regulations of ADEQ, and any regulations promulgated hereto. To the extent regulated in this program, no land shall be altered or cleared unless a plan has been filed. The Environmental Affairs Officer may require revisions to the plan. Grading plans are not applicable to dirt pits, gravel pits, or quarries which are governed by State laws; however, a SWP3 is still required.

Clearing and grading for streets and drainage improvements may be done on residential subdivisions provided the preliminary plat and construction plans have been approved by the Planning Board and the Environmental Affairs Officer and complies with this program or any regulations promulgated hereto. In those cases where filling or cutting in areas with no trees is to be done, the area is to be graded suitable for mowing and shall be re-vegetated.

(b) A grading plan is required for land alteration activities specified in this program. However, all construction work shall include appropriate drainage and erosion control measures to protect neighboring properties. All land alteration in properties within the designated floodplain requires a grading plan without exception.

(c) Stockpiling of construction spoil material at particular locations for a limited time period is permitted, not to exceed six (6) months. Grading and replanting of grassed areas is required upon removal of the stockpile.

(3) Exemptions.

A grading plan shall not be required for emergency work or repairs to protect health, safety and welfare of the public.

(4) Contents of grading and drainage plans.

The grading and drainage plan shall identify the following:

(a) Acreage of the proposed project.



(b) Land areas to be disturbed.

(c) Stages of grading showing the limits of sections to be graded and indicating the approximate order of development.

(d) The height and slope of cuts and fills. Cross sections shall be required every one hundred (100) feet on property where the depth of excavation or fills exceeds five (5) feet, showing original and final grades and will include visual aids to show how the final development, including planting and landscaping will look. A grading plan showing existing and proposed contours with a maximum 2-foot contour interval for slopes less than 10% and a maximum 5-foot contour interval for slopes greater than 10% can be shown as an alternate to cross-sections every 50 feet.

(e) Provisions for collecting and discharging surface water.

(f) Erosion and sediment measures, including structural and vegetative measures.

(g) Seal, Certificate of Authority and signature of a registered engineer qualified under Arkansas state regulations to certify that the grading and drainage plan complies with this program the regulations of ADEQ and any regulations promulgated hereto.

(h) A vicinity drawing showing location of property lines, location and names of all existing or platted streets or other public ways within or immediately adjacent to the tract on topographic mapping or approved equal.

(i) Location of all known existing sewers, water mains, culverts and underground utilities within the tract and immediately adjacent thereto; location of existing permanent buildings on or immediately adjacent to the site if right of entry can be obtained to locate same.

(j) Identification of rights-of-way or easements affecting the property.

(k) A plan of the site at a minimum scale of one (1) inch equals one hundred (100) feet or less, i.e. 1" = 50' or 1" = 30', etc.

(l) Such other information as may be required by the Environmental Affairs Officer, including but not limited to:

1. Address and telephone number of owner, permit applicant and the designated agent responsible for maintenance of erosion and sediment control measures.

2. The approximate location and width of existing and proposed streets.
3. The locations and dimensions of all proposed or existing lots.
4. The locations and dimensions of all parcels of land proposed to be set aside for parks, playgrounds, natural condition perimeters, public use, or for the use of property owners in proposed development.
5. Existing and proposed topography at a maximum of two-foot contour intervals.
6. An approximate timing schedule, indicating the anticipated starting and completion dates of the development: a timing schedule for the sequence of grading and application of erosion and sediment control measures.
7. Acreage of the proposed project.
8. If there are any visible surface indications that unusual materials or soils that would cause street or lot instability, such as non-vertical tree growth, old slides, seepage, or depressions in the soil exists, they should be noted and accompanied by the engineer's recommendation for correcting such problem areas.
9. If there are any surface indications that local material is not suitable for fills, those areas to be filled with outside material and should be identified and the type and source of the fill noted.
10. Specification of measures to control runoff, erosion and sedimentation during the process of construction, noting those areas where control of runoff will be required during construction and indicating what will be used, such as straw bales, sediment basins, silt dams, brush check dams, lateral hillside ditches, catch basins, etc.
11. Measures to protect neighboring built-up areas and city property during process of construction, noting work to be performed, such as cleaning existing ditches, storm culverts and catch basins or raising existing curbs in neighboring areas.
12. Provisions to stabilize soils and slopes after completion of streets, sewers and other improvements, noting on the grading plan when and where ground cover will be planted,

also noting any other means to be used such as placement of stone embankments and riprap or construction of retaining walls.

13. All fill areas shall be compacted to 95% standard proctor density unless otherwise approved in writing by the Environmental Affairs Officer.
14. The grading and drainage plan shall include areas of tree protection, erosion and sediment control provisions meeting standards established in the appendix attached hereto and/ or promulgated by the Environmental Affairs Officer.

(m) The Environmental Affairs Officer may allow minor modifications of the plan to alleviate particular problems during the process of construction. In reviewing request for modifications, the Environmental Affairs Officer. may require from the applicant's engineer appropriate reports and data sufficient to make a decision on the request.

(n) Groups of trees and individual trees that are not to be removed and required undisturbed buffer areas shall be protected during construction by protective fencing and shall not be used for material storage or for any other purpose. The fencing shall be placed and maintained by the owner until all exterior construction except landscaping has been completed. Individual trees to be preserved outside the protected area shall be fenced at the critical root zone and shall be flagged with bright orange vinyl tape wrapped around the main trunk at a height of four (4) feet or more such that the tape is clearly visible to workers on foot or operating equipment.

(o) Major changes to grading plans shall only be permitted by the Environmental Affairs Officer upon consultation with other interested departments and agencies. Examples of major changes are those that substantially increase the height of cuts, the area of clearing or grading, or impact on neighboring properties. More than twenty percent (20%) increase in height, area or impact will normally be considered a major change. Examples of increased impact include reductions in buffer area, increased runoff onto adjacent properties and increased site area that is visible from adjacent properties or public streets.

(5) Grading and drainage plan requirements.

Preparation of grading and drainage plans shall follow the appendix attached hereto and other regulations as may be promulgated by the proper County authority.

- (6) Grading plans shall also conform to the Phase II Stormwater Regulations as established by United States Environmental Protection Agency regulations, as published in the July 6, 1998 Federal Register and/or the latest revisions thereto.
- (7) A copy of all documents filed with the ADEQ shall also be filed with the Environmental Affairs Officer.

#### **ARTICLE 4.**

#### **ENFORCEMENT.**

##### **(A) Enforcement Personnel Authorized**

The following personnel employed by the County shall have the power to issue Notices of Violations and implement other enforcement actions under this program

- (1) The Environmental Affairs Officers (EAO), or the County Engineer:
- (2) The Benton County Sheriff shall have the authority to issue any misdemeanor citations.

##### **(B) Right of Entry and Sampling**

- (1) Whenever the Environmental Affairs Officer has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this program, he shall have the right to enter the premises at any reasonable time to determine if the discharger is complying with all requirements of this program. In the event that the owner or occupant refuses entry after a request to enter has been made, the EAO is hereby empowered to seek assistance from a court of competent jurisdiction in obtaining such entry.
- (2) The Environmental Affairs Officer shall have the right to set up on the property of any discharger to the storm drainage system such devices that are necessary to conduct sampling of discharges.

##### **(C) Enforcement Procedures**

- (1) Issuance of Notice of Violation:

If site deficiencies are noted, the owner and/or the developer or authorized agent shall be given a notice of violation. The notice of violation shall be specific as to the noted violation, corrective measures to be taken, and time frame allowed to complete the work.

- (2) Compliance Review:

At the end of the time period specified above, a follow-up site inspection shall take place to determine whether compliance has been achieved. Depending on that determination, the following actions may occur:

(a) Site Violations Corrected:

If all previous site violations have been corrected, the site reviewer shall issue an inspection report stating that fact.

(b) Previous Violations Not Corrected:

If previously noted violations have not been satisfactorily corrected, then the further actions may be initiated as outlined in the following section.

(3) Submissions from the General Public

Members of the General Public may submit information pertaining to this program to the Environmental Affairs Officer. The Environmental Affairs Officer will consider such submissions as they pertain to the implementation and enforcement of this program and will provide written or verbal response to the person submitting the information

(4) Referrals from other agencies will be handled in the following manner:

(a) Cases will be referred directly to the Environmental Affairs Officer. At this point the Environmental Affairs Officer will determine if enforcement actions are warranted and if proper documentation has been obtained. If the EOA determines that action is required, the enforcement process will be set into motion.

(b) Cases received by the Environmental Affairs Officer will be handled on a first come, first served basis. All enforcement actions will be initiated by a site inspection to verify site conditions that caused the case to be referred. If conditions have been corrected or do not exist as stated in the referral, such shall be documented. If conditions exist as stated in the referral, enforcement actions will proceed.

**(D) Enforcement Options for Failure to Comply**

The Environmental Affairs Officer may issue a stop work order to any persons violating any provision of this program by ordering that all site work stop except that necessary to comply with any administrative order.

#### **(E) Action without Prior Notice**

Any person who violates a prohibition or fails to meet a requirement of this program will be subject, without prior notice, to one or more of the enforcement actions, when attempts to contact the person have failed and the enforcement actions are necessary to stop an actual or threatened discharge which presents or may present imminent danger to the environment, or to the health or welfare of persons, or to the storm drainage system.

#### **(F) Enforcement Actions**

Performance Bonds. Where necessary for the reasonable implementation of this program, the Environmental Affairs Officer may, by written notice, order any owner and/or developer of a construction site or subdivision development to file a satisfactory bond, payable to Benton County, in a sum not to exceed a value determined by the Environmental Affairs Officer to be necessary to achieve consistent compliance with this program. This person may protest the amount of the performance bond to the County Judge. The written protest must be received by the County Judge's Office within 15 days of the date of the notification. A hearing on the matter will be scheduled before the County Judge, appeals from any ruling by the County Judge shall be directed to the Benton County Circuit Court.

#### **(G) Criminal Penalties**

If any violation is also considered a violation of State law then such may be punishable as set out in A.C.A. 8-4-105.

#### **(H) Other Appealable Actions**

Any other action by the Environmental Affairs Officer may be protested or appealed to the County Judge as stated in (F) above.

#### **(I) Other Legal Action**

Notwithstanding any other remedies or procedures available to the County, if any person discharges into the storm drainage system in a manner that is contrary to the provisions of this program, the County Judge may commence an action for appropriate legal and equitable relief including damages costs, and attorney fees in any court of competent jurisdiction. The County Judge may seek a preliminary or permanent injunction or both which restrains or compels the activities on the part of the violator.

#### **(J) Applicability**

This program is effective for the unincorporated urbanized area portions of Benton County (a.k.a. the MS4 areas) as shown on the map exhibit attached hereto.

**ARTICLE 5. FEES**

A fee for each plan filed with the Environmental Affairs Officer shall be remitted as follows:

<b>Total Project Area</b>	<b>Fee</b>
1 acre or less .....	\$ 50.00
Greater than 1 acre.....	\$100.00

Furthermore, any costs incurred by the County utilizing the services of the County Engineer will constitute an additional fee to be paid by the filer of any plan.

# **APPENDIX**

## **EROSION AND SEDIMENT CONTROL GUIDELINES**

### **BEST MANAGEMENT PRACTICES (BMP's)**